

BOARD OF WATER SUPPLY  
COUNTY OF MAUI

REGULAR MEETING  
MINUTES OF JULY 28, 2011

The regular meeting of the Maui County Board of Water Supply was held at the Department of Liquor Control office conference room, 2145 Kaohu Street, Room 105, Wailuku, Maui, on Thursday, July 28, 2011.

CALL TO ORDER

The meeting was called to order by Chairperson Phyllis Robinson at 9:02 a.m.

ATTENDANCE

Members present:           Phyllis Robinson, Chairperson  
                                  Kevin Boteilho  
                                  Patricia Eason  
                                  Donald Gerbig  
                                  John W. Hoxie, Jr.  
                                  William Kamai  
                                  James Rust  
                                  Ted Yamamura

Members excused:           Kelli Myers

Staff present:               David Taylor, Director  
                                  Edward S. Kushi, First Deputy Corporation Counsel  
                                  Gaye Hayashida, Commission Support Clerk

Others:                       Jane Lovell, Deputy Corporation Counsel

ANNOUCEMENTS

None.

APPROVAL OF MINUTES

Chair Robinson asked for an approval of the minutes of June 23, 2011.

Motion:                     Member Hoxie moved to approve the minutes of June 23, 2011

Second:                    Members Yamamura and Rust

Discussion:                None

Vote:                       Unanimous. Motion passed.

TESTIMONY FROM THE PUBLIC

None.

APPEALS

Appeal No. 10-01, an appeal by Noel Johnson Hui / John Pollock

Chair Robinson announced that Mr. Pollock has requested a postponement. Note: His request was sent via email to the Commission Support Clerk. A hard copy of that email was given to the chair.

Deputy Corporation Counsel Jane Lovell, representing the Department of Water Supply stated that the department has no objections to postponing this matter.

Member Kamai asked if there is a limit to the number of postponements.

Mr. Kushi replied no.

The board had no objections in postponing this case. Staff informed the board members that possible meeting dates were given to Mr. Pollock and are now waiting for his response.

UNFINISHED BUSINESS

Discussion and possible action regarding the Board of Water Supply's Recommendation(s) to the Maui County Charter Commission

Copies of Members Gerbig's, Hoxie's and Yamamura's written opinions and thoughts on charter amendment recommendations were distributed to the board at this time. Also distributed were Mr. Kushi's Exhibit A, Existing Charter chapter 11; Exhibit B, Modified Version of the 2001-2002 Charter Commission Revised Final Report in Ramseyer Format; and Exhibit C, Proposed Recommendations of the 2001-2002 Maui County Charter Commission. Note: Copies of these have been made a part of the minutes.

Chair Robinson called for a five-minute recess so that the board members could read the 3 recommendations that were submitted.

Member Gerbig read the motion on page 23 of the June 23<sup>rd</sup> minutes. "The motion shall be simple, to adopt the Chapter 11 Department of Water Supply, Section 8-11, Organization as outlined in the 2001-2002 Maui County Charter Commission Revised Final Report."

Chair Robinson clarified that the reference document the board is using to make their recommendation is Proposal 9 from the 2001-2002 Charter Final Report, which re-structures the department and the Board of Water Supply to give them more autonomy.

The chair noted that all 3 board members' recommendations refer to Proposal 9 and Member Yamamura's recommendation shows this in detail.

Member Yamamura explained that in his written recommendation he cleaned up the suggested Charter amendment wording. He changed the board members' terms to 5 years instead of the original proposal of 3 years.

Motion: Member Gerbig moved that the terms of the board members shall be 5 years in the future autonomous/semi-autonomous board.

Second: Member Eason and Kamai

Discussion: Member Hoxie stated that the board was getting "the wagon in front of the horse." Though he agrees with the five-year term, he believes that the board needs to hammer the issue of recommending a semi-autonomous organization for the Water Board or leave it the way it is.

Member Gerbig agreed and withdrew his motion.

Motion: Member Hoxie moved that the board adopt Member Yamamura's recommendation and have some discussion on it.

Second: Member Rust

Discussion: Director Taylor suggested that the board should vote whether to accept the recommendation of a semi-autonomous board then make changes such as changing 3 years to 5 years. This way the board will be following Roberts Rules of Order using this as a base. The board has already decided that its position is to go to semi-autonomous.

Chair Robinson added that the board's position should not only adopt Member Yamamura's written recommendation but should also include Member Gerbig's and Member Hoxie's recommendations that if it's not going to be semi-autonomous then the Board recommends that the board be done away with.

Member Hoxie explained that that was not his motion but that his motion is that the board moves to a semi-autonomous board.

There being no further discussion the chair called for a vote.

Vote: Unanimous. Motion carried.

Motion: Member Hoxie moved to adopt Member Yamamura's recommendation.

Second: Member Rust

Discussion: Member Yamamura asked if this motion was to adopt the language beginning with the sentence "My proposal for the Charter Commission" and below.

Member Hoxie said yes.

There being no further discussion the chair called for a vote.

Vote: Unanimous. Motion carried.

At this time Chair Robinson asked for motions for changes to the adopted recommendation.

General discussion followed regarding whether the planning director and the public works director should be voting members and whether certain professional qualifications be a requirement for board members.

Member Rust believes that the board should be 9 voting members from the public from each district including Molokai and Lanai. The director, deputy director and staff of the Water Department have the expertise to advise the board. So there is no need for board members to have the professional qualifications.

Member Rust suggested the language should be that the Board of Water Supply shall be 9 voting members, taking out the 7, and the public works and planning departments with no voting rights.

Member Yamamura suggested that Member Rust refer to Exhibit A Section 8.11-3 and pointed out that the language is already there but remove the last paragraph.

Member Rust believes that the most important thing is that each of the 9 members should represent a district.

Motion: Member Gerbg moved to adopt into Member Yamamura's recommendation all of the language under Exhibit A (Existing Charter). Section 8-11.3, except the last sentence which starts as "the board of water supply shall act as advisor."

Second: Members Boteilho and Rust

Discussion: Mr. Kushi said for clarification purposes to leave it as is, striking the last sentence of the charter then it will be an eleven member board but only nine voting members. Appointment of the board members will be pursuant to existing rules and

regulations, five year terms, no re-appointment, can rest 2 years and come back.

Member Yamamura asked if they should be adding to Member Gerbig's motion the last paragraph in Exhibit B which is the appointed members service, terms of office, etcetera.?

Member Hoxie asked Mr. Kushi if they needed to do this.

Mr. Kushi replied no, he thinks they should leave alone.

There being no further discussion the chair called for a vote.

Vote: Unanimous. Motion carried.

At this time the Chair Robinson called for a five-minute recess.

The meeting continued with further discussion on the Board's adoption of Member Yamamura's recommendations for Charter amendments.

Mr. Kushi suggested adopting Section 7-116 of the City and County of Honolulu's charter language regarding legal counsel into the board's adopted recommendation under section 8-11.9 which reads, "the corporation counsel of the city shall be the legal adviser of the department and shall institute and defend, as the board may require, any and all actions involving matters under the jurisdiction of the department. The corporation counsel may, with the prior approval of the board, compromise, settle or dismiss any claim or litigation, for or against the department. The compensation for such legal work shall be agreed upon by the board and the council and shall be paid from revenues of the department. The department may employ an attorney to act as its legal adviser and to represent the department in any litigation to which the department is a party." He also suggested adding "the board does not have to comply with charter section, 3-6(6) of the charter." Mr. Kushi explained that this is the section where only the council can appoint special counsel.

Motion: Member Gerbig moved to adopt the City and County of Honolulu (Charter), Section 7-116 Legal Counsel in place of Member Yamamura's Number 8 Legal Counsel (Section 8-11.8) with the addition "without regard to the requirements of section 3-6(6) of this charter" or something to that affect.

Second: Members Boteilho and Rust

Discussion: Mr. Kushi stated for clarification that the corporation counsel's office represents the board but the department can also hire its own attorney.

Director Taylor asked if this language gives flexibility in allowing the Board to use the services of the corporation counsel and to hire outside attorney to represent the department.

Mr. Kushi replied yes. If you use corporation counsel then his office's time will be charged by the council to the department. The general rule for outside counsel is that you have to have a necessity for it otherwise his office or the in-house attorney will do it.

There being no further discussion the chair called for a vote.

Vote: Unanimous. Motion carried.

Director Taylor expressed his concern that should this proposal pass in 2012 then there won't be a budget for this board to operate until July 1, 2013.

Chair Robinson reminded the board that Council Member Victorino advised that if this board becomes semi-autonomous then please keep in mind the transition; it's going to be difficult.

Motion: Member Rust moved that the provisions of this amendment if passed shall take effect on July 1, 2013.

Second: Member Hoxie

Discussion: Mr. Kushi stated that he has to look into the issue about current board members being forced to resign if the amendment passes.

There being no further discussion the chair called for a vote.

Vote: Unanimous. Motion carried.

Mr. Kushi suggested adding the Section 7-119 of the City and County of Honolulu's charter language regarding Applicability of the Charter Provisions into the board's adopted recommendation.

Motion: Member Yamamura move to include into the adopted recommendation the language of the City and County of Honolulu (Charter), Section 7-119 Applicability of Charter Provisions, which states, "Except as

otherwise provided, no provision of this charter, other than those set forth in this article of the charter, shall be applicable to the department."

Second: Member Boteilho

Discussion: Member Hoxie asked if this covers other charter amendments that could be implied to be affecting the Department of Water Supply.

Mr. Kushi replied, right. Anything in the current charter would not apply to the department unless it is referenced in this article.

There being no further discussion the chair called for a vote.

Vote: Unanimous. Motion carried.

Chair Robinson asked board members for their opinion as to whether the board should also propose the alternative to dissolve the Board of Water Supply should the proposed recommendation for a semi-autonomous board not pass as Members Gerbig, Hoxie and Yamamura stated in their written statements; whether it should be the board's recommendation to be "all in or all out"; to be a semi-autonomous board or dissolve the board.

After much discussion, it was agreed that as a back up plan Mr. Kushi write an alternate proposed Charter Chapter 11 removing all references to the board but leaving the sections dealing with a Department of Water Supply intact. The board will review this at the next meeting. No motion was made.

#### OTHER BUSINESS

Receipt of Board Member request for agenda items to be placed on future agendas.

1. Appeal No. 11-1, Discussion and possible action regarding whether to appoint a hearings officer to hear this case.
2. Charter Commission Recommendation to be placed under Unfinished Business.

#### COMMUNICATIONS

COM 11-05, Letter from Rick W. Volner, Jr., HC&S Plantation General Manager, inviting the Board of Water Supply Chair to a tour of the Pu'unene operations.

Chair Robinson informed that board that the invitation listed only 3 dates and 2 of them have already passed. The only one available is August 1<sup>st</sup>.

Member Hoxie recommended that Chair Robinson go on the tour and she replied that she is going and had wanted to go for a long time. Director Taylor stated that he also is attending the August 1<sup>st</sup> tour.

Chair Robinson will accept their invitation and she will notify them herself.

DIRECTOR'S REPORT

Director Taylor said that the only thing he can report is that the board has been diligently pursuing charter amendments and have done an excellent job.

DIVISION REPORTS

No questions were raised on the monthly division reports.

ADJOURNMENT

Motion: Member Hoxie moved to adjourn the meeting.  
Second: Member Yamamura and Rust  
Discussion: None.  
Vote: Unanimous. Motion carried.

There being no further business the meeting was adjourned at 11:25 a.m.

Prepared by:



\_\_\_\_\_  
Gaye Hayashida  
Commission Support Clerk

Approved by:



\_\_\_\_\_  
David Taylor  
Director

182 Uakoko Place  
Haiku, Hawaii

July 21, 2011

After reviewing the present charter and comparing the present Maui County BWS responsibilities with the other Counties, I would like to offer the following:

It is my opinion that the Water Dept. of Maui County should be viewed as a utility charged with the mission of collecting, treating and delivering safe drinking water to its customers. These customers can be compared to those of Maui Electric who are receivers of electricity from the utility, but in this case, receive water from the Dept. of Water.

Since 1949, the structure of the Maui County Dept. of Water has change numerous times from being semi autonomous to a county department. In my view, this has not been good for the long term goal of supplying water to our customers. The Water Dept. needs to be stable, have long term management and not be subject to the ever changing goals of the County Council and/or the Mayor's Office.

I recommend that the Commission select one of the two options listed below in their effort to improve water delivery to the customers of Maui County:

1. Make the Water Dept. semi autonomous based on either the recommendation of the 2001-2002 Charter Commission or a model based on the City and County of Honolulu.
2. Do away with the present Board of Water supply and assign what few tasks it has to the Director of the Board of Water Supply and/or the County Board of Appeals.

Submitted by:

John W. Hoxie, Jr.

**Don R. Gerbig**  
**BWS Member**  
**6 Tulip Place**  
**Lahaina, HI, 96761**

July 23, 2011

**To:** Board of Water Supply, County of Maui  
**Subject:** Suggested BWS Changes within the Maui County Charter

As most know, the Board has been autonomous and non-autonomous over the past several years and is currently non-autonomous, having only the responsibility of reviewing the DWS budget, conducting WUDP hearings, and the hearing of appeals. Basically, only three duties, with little oversight of the Department of Water Supply.

The Department of Water Supply should be viewed as a utility, similar to MECO. The DWS as a non-profit organization should be autonomous and outside the immediate authority of the County Council, but under the purview of a Board of Water Supply. It should have its own budget and financing mechanisms. It should have its own financial means for providing water to its customers.

It is my opinion that the Department of Water Supply of Maui County should be viewed as a utility charged with the mission of collecting, treating and delivering safe drinking water to its customers with the Board of Water Supply representing the customers.

The Board of Water Supply should be either autonomous or semi-autonomous similar to what was recommended by the 2001-2002 Charter Commission or a similar model based on the City and County of Honolulu parameters.

Such a structure is best for the long term operation, stability, and planning of the Water Department and the County of Maui and would eliminate many of today's current short term politically correct solutions that should be better addressed with long term planning.

Should an autonomous or semi-autonomous Board not be the desire of the Charter Commission then the Commission should eliminate the current Board of Water Supply and have future hearings conducted by one of the other County appeal boards and all public WUDP hearings be conducted by the DWS engineering department prior to the Director submitting his opinion to the County Council.

Respectfully submitted,

Don R. Gerbig,  
Board Member

I agree with and support the positions of those BWS members preferring a semi-autonomous Board of Water Supply; or, dissolve the BWS and surrender all advisory functions to the Department of Water Supply, and appeal functions to other existing appeal boards.

My proposal for the Charter Commission.

### **DEPARTMENT OF WATER SUPPLY**

(1) Organization. There shall be a department of water supply consisting of a board of water supply, a director, a deputy director, and the necessary staff.

(2) Functions of the Department.

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems. The department shall also have authority to coordinate private water systems in order to promote the policies stated in the Hawai'i State Constitution and other applicable state laws, while also respecting existing private property rights.

3. The department shall implement the county's General Plan and community plans in the administration of its affairs. The department shall prepare a water use and development plan for each community plan district, which shall be consistent with land-use and zoning classifications, the county's general plan and community plans, and which shall include an inventory of existing water uses and sustainable yields, projected water demand, proposed public and private water system improvements and water source developments (along with alternative options), storage, and costs. The department shall also prepare a long-range capital improvement plan designed to ensure proper maintenance of existing public water systems and to increase the publicly-owned and publicly maintained water systems and infrastructure. The water use and development plans for each community plan district and capital improvement plans shall be completed and be subject to the approval of the county council, as provided by law, and shall be updated, as required by the board, at least every five (5) years.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

(3) Board of Water Supply. The board of water supply shall consist of nine voting members, seven of whom shall be appointed by the mayor with the approval of the council, one of whom shall be the director of the department of planning, and one of whom shall be the director of the department of public works. The appointed members shall serve for five year staggered terms, and can be reappointed once (subject to reconfirmation by the council).

(4) Powers, Duties, and Functions. The board of water supply shall:

1. Appoint, evaluate annually, and remove the director of the department of water supply. The director shall have a minimum of three years of experience in an administrative capacity, either in public service or private business, or both, and shall be a registered engineer.

2. Have the authority to create and abolish positions.

3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water.

4. Adopt an annual operating and capital budget.

5. Have the authority to issue revenue bonds under the name of the board of water supply.

6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply.

7. Perform such other duties and functions as shall be prescribed by law.

(5) Powers, Duties, and Functions. The director shall:

1. Appoint a deputy director
2. Recommend rules and regulations for adoption by the board.
3. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county.
4. Prepare and implement long-range capital improvement plans, which have been adopted by the board.
5. Prepare an annual operating and capital budget for the board's review and action.
6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.
7. Perform such other duties and functions as shall be prescribed by law.

(6) Revenues. The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

(7) Independent Audit and Council Oversight. The accounts, financial status, and management operation of the department shall be examined and audited annually by a certified public accountant whose services shall be contracted for by the council and whose fees shall be paid by the council. After the audit is prepared, its results shall be made public, and the council shall review it and make recommendations for any changes that may be appropriate.

(8) Legal Counsel. The corporation counsel of the county shall be the primary legal adviser of the department. but the board of water supply shall be empowered, by a two-thirds vote of its entire membership, to hire special counsel for any special matter presenting a real necessity for such employment, without regard to the requirements of section 3-6(6) of this charter. All legal services required by the department and the board shall be paid from the revenues of the department.

CHAPTER 11  
DEPARTMENT OF WATER SUPPLY

**Section 8-11.1. Organization.** There shall be a department of water supply consisting of a board of water supply, a director, a deputy director and the necessary staff. (Amended 1988)

**Section 8-11.2. Functions of the Department.**

1. The department of water supply shall manage and operate all water systems owned by the county.

2. In order to protect and manage the water resources in the county, the department of water supply shall make studies, surveys, and investigations relating to the locations and sources of water supply within the county, the amounts available for current and prospective uses, the water resources which may be available for such uses and the maximum sustainable yield of such sources.

3. The department of water supply shall implement the county's general plan and community plans in the administration of its affairs. The department of water supply shall prepare and annually update a long-range capital improvement plan and an updated water use and development plan, which shall be subject to the approval of the council, as provided by law. (Amended 2002, 1988)

**Section 8-11.3. Board of Water Supply.** The board of water supply shall consist of nine members who shall be appointed by the mayor with the approval of the council. The director of the department of planning and the director of the department of public works and environmental management shall be non-voting ex-officio members of the board of water supply. The board of water supply shall act as advisor to the director of the department of water supply, the mayor and the council in all matters concerning the county's water system. (Amended 2002, 1988)

**Section 8-11.4 Powers, Duties and Functions.** The board of water supply shall:

1. Review and submit to the mayor the department of water supply's request for an annual appropriation for operations and capital improvements.

2. Recommend the establishment and adjustment of rates and charges for furnishing water; such rates and charges shall be submitted to the mayor for review and approval. If approved by the mayor, proposed rates and charges shall be submitted to the council for enactment by ordinance.

3. Perform such other duties and function as shall be prescribed by law. (Amended 2002, 1992, 1988)

**Section 8-11.5. Director and Deputy Director of Water Supply.** The director of the department of water supply shall be appointed by the mayor with the approval of the council, and may be removed by the mayor with the

approval of the council. The director of the department of water supply shall have a minimum of five years of experience in a management capacity, either in public service or private business, or both. The deputy director of the department of water supply shall be appointed by the mayor and may be removed by the mayor. The director or deputy of the department of water supply shall be a registered engineer. (Amended 2002, 1988)

**Section 8-11.6 Powers, Duties and Functions.** The director of the department of water supply shall:

1. Administer the affairs of the department of water supply, and be responsible for the day-to-day management and control of all water systems of the county.

2. Prepare long-range capital improvement plans and up-to-date water use and development plans for review by the board of water supply and enactment by the council by ordinance.

3. Implement enacted long-range capital improvement plans and water use and development plans.

4. Prepare an annual operating and capital budget for the board of water supply's review and submit the department of water supply's request for an annual appropriation to the mayor.

5. Perform such other duties and functions as shall be prescribed by law. (Amended 2002, 1988)

**Section 8-11.7 Revenues.** The revenues of the department of water supply shall be kept in a separate fund and shall be such as to make the department of water supply self-supporting, provided that the council may issue general obligation bonds on behalf of the department of water supply and may provide capital improvement appropriations for the department of water supply. (Amended 2002, 1988)

CHAPTER 11  
DEPARTMENT OF WATER SUPPLY  
(Modified Version of the 2001 – 2002 Maui County Charter Commission Revised Final Report)

**Section 8-11.1. Organization.** There shall be a department of water supply consisting of a board of water supply, a director, a deputy director and the necessary staff.

**Section 8-11.2. Functions of the Department.**

1. [The department of water supply shall manage and operate a] All water systems owned and operated by the county, including all county water rights and water sources, together with all material, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. [In order to protect and manage the water resources in the county, the department of water supply shall make studies, surveys, and investigations relating to the locations and sources of water supply within the county, the amounts available for current and prospective uses, the water resources which may be available for such uses and the maximum sustainable yield of such sources.] The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems. The department shall also have the authority to coordinate private water systems in order to promote the policies stated in the Hawai'i State Constitution and other applicable state laws, while also respecting existing private property rights.

3. The department [of water supply] shall implement the county's [g] General [p] Plan and community plans in the administration of its affairs. The department [of water supply] shall prepare [and annually update a long-range capital improvement plan and an updated] a water use and development plan[, ] for each community plan district or departmental water system district, which shall be consistent with land-use and zoning classification, the county's general plan and community plans, and which shall include an inventory of existing water uses and sustainable yields, projected water demand, proposed public and private water system improvements and water source developments (along with alternative options), storage, and costs. The department shall also prepare a long-range capital improvement plan designed to ensure proper maintenance of existing public water systems and to increase the publicly-owned and publicly-maintained water systems and infrastructure. The water use and development plans, and any updates thereof, for each community plan district or departmental water system district [which] shall be subject to the approval of the county council, as provided by law.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

**Section 8-11.3. Board of Water Supply.** The board of water supply shall consist of nine voting members, [who] seven of whom shall be appointed by the mayor

with the approval of the council[.], one of whom shall be [T]the planning director [of the department of planning], and one of whom shall be the director of the department of public works [and environmental management shall be non-voting ex-officio members of the board of water supply. The board of water supply shall act as advisor to the director of the department of water supply, the mayor and the council in all matters concerning the county's water system]. The appointed members service, terms of office and other related conditions shall be subject to the provisions of Section 13-2 of this charter, provided that neither the planning director nor the director of public works shall serve as the board's chair or vice-chair.

**Section 8-11.4. Powers, Duties and Functions.** The board of water supply shall:

1. [Review and submit to the mayor the department of water supply's request for an annual appropriation for operations and capital improvements.] Appoint, evaluate annually, and may remove the director of the department of water supply.

2. [Recommend the establishment and adjustment of rates and charges for furnishing water; such rates and charges shall be submitted to the mayor for review and approval. If approved by the mayor, proposed rates and charges shall be submitted to the council for enactment by ordinance.] Have the authority to create and abolish positions.

3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water.

4. Adopt an annual operating and capital budget.

5. Have authority to issue revenue bonds under the name of the board of water supply.

6. Have authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply.

[3.] 7. Perform such other duties and function as shall be prescribed by law.

**Section 8-11.5. Director [and Deputy Director] of Water Supply.** The director of the department of water supply shall be appointed [by the mayor with the approval of the council, and may be removed by the mayor with the approval of the council.] and evaluated annually by the board of water supply, and may be removed by the board of water supply. The director [of the department of water supply] shall have a minimum of [five] three years of experience in [a management] an administrative capacity, either in public service or private business, or both. [The deputy director of the department of water supply shall be appointed by the mayor and may be removed by the mayor.] The director or the deputy director shall be a registered engineer.

**Section 8-11.6. Powers, Duties and Functions.** The director [of the department of water supply] shall:

1. Recommend the rules and regulations for adoption by the board.

[1.] 2. Administer the affairs of the department [of water supply], including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county.

[2.] 3. Prepare and implement long-range capital improvement plans [and up-to-date water use and development plans for review by the board of water supply and enactment by the council by ordinance], which have been adopted by the board.

[3.] 4. [Implement enacted long-range capital improvement plans and water use and development plans.] Appoint a deputy director.

[4.] 5. Prepare an annual operating and capital budget for the board's [of water supply's] review and approval [and submit the department of water supply's request for an annual appropriation to the mayor].

6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.

[5.] 7. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11.7. Revenues.** The revenues of the department [of water supply] shall be kept in a separate fund and shall be such as to make the department [of water supply] self-supporting[, provided that the council may issue general obligation bonds on behalf of the department of water supply and may provide capital improvement appropriations for the department of water supply].

**Section 8-11.8. Independent Audit and Council Oversight.** The accounts, financial status, and management operation of the department shall be examined and audited annually by a certified public accountant whose services shall be contracted for by the council and whose fees shall be paid by the council. After the audit is prepared, its results shall be made public, and the council shall review it and make recommendations for any changes that may be appropriate.

**Section 8-11.9. Legal Counsel.** The corporation counsel of the county shall be the primary legal adviser of the department, but the board of water supply shall be empowered, by a two-thirds vote of its entire membership, to hire special counsel for any special matter presenting a real necessity for such employment, without regard to the requirements of section 3-6(6) of this charter. All legal services required by the department and the board shall be paid from the revenues of the department.

CHAPTER 11  
DEPARTMENT OF WATER SUPPLY  
(Modified Version of the 2001 – 2002 Maui County Charter Commission Revised Final Report)

**Section 8-11(1). Organization.** There shall be a department of water supply consisting of a board of water supply, a director, a deputy director, and the necessary staff.

**Section 8.11(2). Functions of the Department.**

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems. The department shall also have the authority to coordinate private water systems in order to promote the policies stated in the Hawai'i State Constitution and other applicable state laws, while also respecting existing private property rights.

3. The department shall implement the county's General Plan and community plans in the administration of its affairs. The department shall prepare a water use and development plan for each community plan district or departmental water system district, which shall be consistent with land-use and zoning classifications, the county's general plan and community plans, and which shall include an inventory of existing water uses and sustainable yields, projected water demand, proposed public and private water system improvements and water source developments (along with alternative options), storage, and costs. The department shall also prepare a long-range capital improvement plan designed to ensure proper maintenance of existing public water systems and to increase the publicly-owned and publicly-maintained water systems and infrastructure. The water use and development plans, and any updates thereof, for each community plan district or departmental water system district shall be subject to the approval of the county council, as provided by law.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

**Section 8-11(3). Board of Water Supply.** The board of water supply shall consist of nine voting members, seven of whom shall be appointed by the mayor with the approval of the council, one of whom shall be the planning director, and one of whom shall be the director of public works. The appointed members service, terms of office and other related conditions shall be subject to the provisions of Section 13-2 of this charter, provided that neither the planning director nor the director of public works shall serve as the board's chair or vice-chair.

**Section 8-11(4). Powers, Duties and Functions.** The board of water supply shall:

1. Appoint, evaluate annually, and may remove the director of the department of water supply.
2. Have the authority to create and abolish positions.
3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water.
4. Adopt an annual operating and capital budget.
5. Have the authority to issue revenue bonds under the name of the board of water supply.
6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply.
7. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11(5). Director of Water Supply.** The director of the department of water supply shall be appointed and evaluated annually by the board of water supply, and may be removed by the board of water supply. The director shall have a minimum of three years of experience in an administrative capacity, either in public service or private business, or both. The director or the deputy director shall be a registered engineer.

**Section 8-11(6) Powers, Duties and Functions.** The director shall:

1. Recommend the rules and regulations for adoption by the board.
2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county.
3. Prepare and implement long-range capital improvement plans, which have been adopted by the board.
4. Appoint a deputy director.
5. Prepare an annual operating and capital budget for the board's review and approval.
6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.
7. Perform such other duties and functions as shall be prescribed by law.

**Section 8-11(7). Revenues.** The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

**Section 8-11(8) Independent Audit and Council Oversight.** The accounts, financial status, and management operation of the department shall be examined and audited annually by a certified public accountant whose services shall be contracted for

by the council and whose fees shall be paid by the council. After the audit is prepared, its results shall be made public, and the council shall review it and make recommendations for any changes that me be appropriate.

**SECTION 8-11(9) Legal Counsel.** The corporation counsel of the county shall be the primary legal adviser to the department, but the board of water supply shall be empowered, by a two-thirds vote of its entire membership, to hire special counsel for any matter presenting a real necessity for such employment, without regard to the requirements of section 3-6(6) of this charter. All legal services required by the department and the board shall be paid from the revenues of the department.